JD(ATL)–15–10
Wayne, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

FORD MOTOR CORPORATION
Respondent Employer

and **CASE 7–CA–52422**

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) and its LOCAL 900
Respondent Unions

and **CASE 7–CB–16658**

ELIZABETH CRAIG, An Individual
Charging Party

Rana S. Roumayah, Esq.,
for the General Counsel
Stephen M. Kulp, Esq.,
for Respondent Employer
Blair K. Simmons, Esq.,
for Respondent Unions

DECISION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge: When the Respondent Employer stopped making trucks at one of its factories, it transferred bargaining unit employees to two other facilities, with each employee allowed to choose the plant to which he or she would be assigned. The General Counsel alleges that the Respondent Unions unlawfully requested that an employee be assigned to a plant contrary to her choice, and that Respondent Employer unlawfully complied. However, based upon the credited evidence, I conclude that neither Respondent Unions nor Respondent Employer violated the Act.

Procedural History

This case began on October 2, 2009 when Elizabeth Craig (the "Charging Party") filed unfair labor practice charges against Ford Motor Corporation ("Respondent Employer") and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 900, (For brevity, the International Union will be referred to as "Respondent International," Local 900 as "Local Union" or "Respondent Local," and both together as "Respondent Unions"). The National Labor Relations Board (the "Board") docketed these charges as Case 7–CA–52422 and Case 7–CB–16658, respectively.

The Charging Party amended both charges on November 19, 2009 and further amended the charge in Case 7–CB–16658 on December 16, 2009.

After an investigation, the Regional Director for Region 7 of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the "Complaint") on December 28, 2009. In doing so, he acted for and with authority delegated by the Board's General Counsel (the "General Counsel" or the "government"). The Respondents filed timely Answers.

On March 24, 2010, a hearing opened before me in Detroit, Michigan. On that date, and on March 29 and 30, 2010, the parties presented evidence. After the hearing closed, the parties filed briefs, which have been considered.

Admitted Allegations

Based on the admissions in Respondents' Answers and uncontroverted record evidence, I find that the General Counsel has proven the allegations raised in Complaint paragraphs 1(a), 1(b), 2(a), 2(b), 2(c), 3, 4, 5, 6, 9, 10, 11, 12, and 13(a).

More specifically, I find that the charges and amended charges were filed and served as alleged. Further, I find that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that Respondent Unions are labor organizations within the meaning of Section 2(5) of the Act. Additionally, I conclude that assertion of jurisdiction in this case is consistent with the Board's standards.

Based on the admissions in Respondents' Answers, I also find that at all times material to the Complaint, Respondent Employer operated the following three manufacturing facilities in Wayne, Michigan: The Michigan Truck Plant (referred to in the Complaint as the Michigan Truck/Michigan Assembly plant), the Wayne Assembly Plant and the Integral Stamping and Assembly Plant (the "ISA plant").

At all material times, Respondent Employer has recognized Respondent International as the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of the production and maintenance employees at each of these three plants. Respondent International has designated Respondent Local to provide services to the bargaining unit employees at these three plants.

Respondent Employer has admitted that Director of Labor Relations Carol Blumberg is its supervisor. I so find.

The parties have stipulated, and I find, that from about August 2008 to January 9, 2009, Johanna Shea held the position of human resources supervisor – labor, and was a supervisor of Respondent Employer within the meaning of Section 2(11) of the Act and its agent within the meaning of Section 2(13) of the Act. The parties further stipulated, and I find, that from September 2008 through January 28, 2009, Romeo Pasquilitto held the position of human resources associate – labor, and was an agent of Respondent Employer within the meaning of Section 2(13) of the Act.

In their amended Answer, Respondent Unions have admitted that International Representatives Chris Crump and Michael Oblak, and Local Union President Anderson Robinson Jr., are their agents within the meaning of Section 2(13) of the Act. They also admitted that the following individuals are their agents within the meaning of Section 2(13): Bill Johnson, Michael Stockdale, Gregory Poet, Jody Caruana, Larry Shook and Pam Swope. I so find.

Facts

Respondent Employer operated three separate manufacturing plants at one location in Wayne, Michigan. When it decided to cease making trucks at one of these factories, the Michigan Truck Plant, it reached agreement with the Union on a plan to transfer employees to the other two plants.

Under the plan, each bargaining unit employee with sufficient seniority at the Michigan Truck Plant had to state whether he or she wished to be transferred to the Michigan Assembly Plant or the Integral Stamping and Assembly Plant. Only employees with enough seniority to make a choice were asked to choose. Employees at the ISA Plant received a higher wage rate, and presumably this facility was the more desirable choice.

Charging Party Craig worked as an assembler, a bargaining unit position, at the Michigan Truck Plant. Her seniority placed her among the group of employees who got to choose between working at the ISA factory and the Michigan Assembly Plant.

Craig also had been active in the Local Union. She had held the Union office of district representative until being elected to another Union position, bargaining representative, in the spring of 2008. She continued to hold that position until her transfer to the ISA Plant.

Although an International Union official had negotiated the agreement which allowed some of the Michigan Truck Plant employees to select their transfer destinations, it fell to the Local Union to contact the employees one by one and then convey the employees' choices to management. Craig, in her capacity as bargaining representative, surveyed most of these employees.

At various times during the survey process, the Local Union provided newly–obtained information to management. Human Resources Representative Romeo Pasqualitto became the

custodian of the data. As Pasqualitto received the information, he kept it in a "master file" which, in a sense, became the definitive source. Pasqualitto credibly testified that the Employer had authorized no one other than himself to update the master file.

According to Craig, the survey began in December 2008 and ran through March 2009. However, other record evidence indicates that it didn't last that long. For example, Pasqualitto testified that the survey began around December 17, 2008 and "was to conclude upon my departure from Michigan Truck Plant." Pasqualitto transferred to another plant on February 2, 2009.

Additionally, the Employer's labor relations manager, Carol Blumberg, testified that the survey took place in December 2008 and January 2009. Based on my observations of the witnesses, I credit Pasqualitto and Blumberg and find that the survey period closed at the end of January.

The Union leadership at the truck plant included Larry Shook. In 2005, Shook had been serving the Local Union as a bargaining representative, an elected position, when he accepted an appointment to a position with the International Union. This new position did not require Shook to move. Rather, he stayed at the truck plant and worked with a management labor relations representative, usually Romeo Pasqualitto, to produce a monthly report. Shook's position thus entailed frequent contact with both the International Union and with Pasqualitto, the management official who became responsible for keeping the survey data.

Charging Party Craig, as a Union bargaining representative, was part of the Local Union's leadership team. At one point in the survey process, International Representative Michael Oblak instructed that Local Union officials who were bargaining unit employees had to participate in the survey. This meant that Craig would have to state whether she wanted to be transferred to the ISA facility or to the Wayne Assembly Plant.

After receiving Oblak's instruction, Shook spoke with Craig. In his testimony, Shook described this conversation: "I said I know none of us like to hear it, but we were told we have to make a decision on what plant we're going to."

According to Shook, Craig said "that she would pick ISA if there wasn't an appointed position available for her at Wayne." However, Craig denied ever making such a statement to Shook.

The General Counsel's post–hearing brief vigorously assails Shook's credibility. For example, the brief states:

> Shook testified that he was instructed by [International Representative] Oblak to survey the union committee at Michigan Truck Plant, which includes Craig. (Tr. 355, 369) When Oblak was asked if he assigned Shook to survey Craig, he responded, "No, Larry Shook doesn't work for me. He works for Greg Poet." (Tr. 427)

Shook testified that he reported to Poet, which is consistent with Oblak's statement that Shook did not report to him but rather worked for Poet. Shook further testified that he sent

Oblak updates regarding how the survey was proceeding.

The record clearly establishes that Oblak issued general instructions to the group of Local Union officers conducting the survey. For example, Shook testified that "we got direction from Mike Oblak, the servicing rep, that there will be no stragglers and get a plant identified next to each name."

That part of Shook's testimony fits comfortably enough with Oblak's denial that he had assigned Shook to survey Craig. But during cross–examination, Shook went further, indicating that Oblak had given him a specific instruction to survey Craig:

> Q. Thank you. And you testified that Oblak was the person who told you to survey Craig; is that correct?
> A. Yes, I did say that, yes.

This statement does bring Shook squarely into conflict with Oblak, necessitating a credibility resolution. Based upon my observations of the witnesses, I conclude that Shook testified reliably and credit his testimony when it conflicts with that of other witnesses. Accordingly, I find that Oblak did assign Shook to survey Craig.

Similarly, crediting Shook rather than Craig, I find that he did have a conversation with Craig about her transfer preference and that she did express a conditional preference to be transferred to the ISA Plant. In deciding to credit Shook rather than Craig, I take into account a comment Craig made at a meeting in early September 2009, which will be described further below. At that meeting, Craig maintained that she had not been *formally* surveyed. It seems unlikely that she would have used the modifier "formally" unless there had, in fact, been some sort of informal discussion.

Craig, who did most of the surveying herself, typically did so with some degree of formality. She testified that when she discovered that there were no guidelines for the survey process, she told Labor Relations Supervisor Shea, "What I am going to do to ensure that the employees can't say that they were not surveyed, I'm going to obtain signatures from each one of them, and I will bring that over to you as I complete the survey."

On the other hand, Shook's interview with Craig appears to have been quite casual. Shook testified that he told Craig that "we have to make a decision on what plant we're going to." That remark does not explicitly state that Shook was conducting the survey then and there.

Further, Craig's reply does not suggest that she understood she was being surveyed. Shook quoted her as saying "she would pick ISA if there wasn't an appointed position available for her at Wayne." The conditional nature of Craig's response suggests she simply was explaining how she *would* answer the survey were she to be asked.

Thus, Craig had some basis for saying that she had never been *formally* surveyed. However, she would have had no reason to add this qualifier absent some kind of informal discussion. Therefore. crediting Shook, I conclude that the conversation took place as he described, and that Shook did report to management that Craig's preference was ISA.

After surveying other Local Union officers, Shook reported the information to Pasqualitto. Although Craig had expressed only a qualified preference for the ISA plant, it seems quite possible that this condition got lost in the process of conveying the information to management. The survey question had asked the employee for a clear choice that would be easy to record on a form. To make Craig's answer fit, either Shook or Pasqualitto may have trimmed away the ambiguity. In any event, on management's spreadsheet, "ISA" appeared beside Craig's name.

On February 17, 2009, Human Resources Supervisor Johanna Shea forwarded to Craig a document which Craig referred to as the "complete plant selection sorted." Craig noticed the "ISA" notation next to her name. She wrote "TBD" beside her name and telephoned one of the Employer's labor relations representatives, Timothy Kish.

Craig testified that when she made Kish "aware of the error," he replied "Don't worry about it; we will handle it in the end. The number one focus is getting the employees placed first." Although Kish testified, counsel did not ask him about this conversation and he made no reference to it. In the absence of a denial, I conclude that the conversation took place as Craig described.

When Craig telephoned Kish in February 2009, she was still assigned to the Michigan Truck Plant. The Employer had stopped making trucks there before Thanksgiving 2008, but then it had begun retooling. The Employer and Union agreed that a number of Local Union officials would remain at the plant. These officials included Plant Chairman Gregory Poet and Bargaining Representative Craig, among others.

However, the arrangement ended in August 2009. Witnesses differ somewhat as to the exact dates. To the extent conflicts exist, I resolve them by crediting the testimony of Poet.

On August 28, 2009, Poet spoke with the Employer's director of labor relations, Carol Blumberg, and with labor relations supervisor Johanna Shea. They discussed the placement of the Local Union officials who had not yet been transferred. During this conversation, Poet said that Craig had not yet been surveyed.

However, three days later, Blumberg and Shea told Poet that they had talked with William Johnson, the Local Union's plant chairman at the Wayne Assembly Plant. Johnson had told them that Craig indeed had been surveyed and had chosen the ISA plant. Johnson described this August 31, 2009 conversation as follows:

> Q. And what did Ms. Shea say to you on that phone call?
> A. Said that Beth had reported to the Wayne Plant and asked me if I had an issue with changing her survey.
> Q. And your response was?
> A. I absolutely had an issue with changing her survey.
> Q. And why was that?
> A. I had already told three other people who surveyed for ISA that no, I would not support that or allow them to change. I didn't have the

> authority locally to change that survey. That agreement was made at the international level, and I didn't have the authority to make any changes to it.
>
> Q. Who were the three people that you told they could not change their choice?
>
> A. They were three electricians, I believe, and they didn't talk to me personally. They sent their request through their committee man. Mimms, Bella — and I don't recall the third name.

Based upon my observations of Johnson's demeanor while he testified, I conclude that he was quite candid. Moreover, when asked whether he had called Craig a "water buffalo," Johnson admitted that he had called her a "lying water buffalo." It was not in Johnson's interest, as a Union official, to make such an admission because the General Counsel relies upon the comment as evidence of animus. In sum, I conclude that Johnson was an honest and reliable witness, and I credit his testimony.

Johnson's adament position, that Craig had already been surveyed, placed him at odds with Poet, who maintained with Craig that she had not been surveyed. Both Johnson and Poet were Local Union officials at the same level, plant chairman. At this point, an International representative, Christopher Crump, became involved.

Crump attended a meeting with Poet, Craig, Local Union President Anderson ("Junior") Robinson, Michael Stockdale (the Local Union's chairman for the ISA plant), and Labor Relations Supervisor Johanna Shea. Johnson was not present. Crump asked Craig if she had been surveyed. Craig replied that she had not been formally surveyed and that she was "to be determined."

Shea suggested that they survey Craig right then and Craig said she wanted to work at the Wayne Assembly Plant. Management had no objection. The meeting ended with the understanding that Craig would report to the Wayne Assembly Plant. Crump then went to Plant Chairman Johnson and told him of the outcome. Johnson told Crump he should look into the matter further. Crump decided to conduct a complete investigation.

Crump testified that he interviewed other members of the Union's leadership committee who were working at the Michigan Truck Plant at the time of the survey. Specifically, he spoke with Andre Green and Jody Caruana. He also spoke with Larry Shook, who did some of the surveying.

According to Crump, Shook said that he had asked Craig "her selection" and had reported her response to Pasqualitto. This testimony is consistent with Shook's testimony and I credit it.

Crump also testified that Green and Caruana told him that they "all agreed, once they talked amongst themselves. . .that Beth [Craig] had selected ISA in our discussions." Although Green did not take the witness stand, the General Counsel called Caruana, whose account did not appear to be consistent with Crump's.

Caruana testified before Crump and no one asked him any questions about what he told Crump. However, Caruana did testify that to his knowledge, Craig was never surveyed. He also testified that none of the Local Union officials who remained at the truck plant was surveyed.

Caruana did not specifically testify that he told Crump that the Local Union officials had been surveyed. Moreover, Crump did not quote Caruana making any specific statement. Rather, he simply said that "they all agreed" without identifying any particular person as spokesman. In these circumstances, Caruana's testimony does not directly contradict Crump's and, I conclude, it does not detract from Crump's credibility.

Crump went back to Craig for further information. He asked her for any documentation which disputed that she had selected the ISA plant. However, Crump testified, Craig had "nothing to offer other than verbally telling me her side of the story."

At the end of his investigation, Crump concluded that Craig had, in fact, been surveyed and had expressed a preference for transfer to the ISA plant. Even if Caruana had told Crump exactly what he said on the witness stand – that, to his knowledge, Craig was never surveyed – the evidence before Crump afforded a reasonable basis for the conclusion that he reached.

Particularly persuasive evidence was Shook's statement to Crump that he, Shook, had surveyed Craig, that Craig had indicated a preference for the ISA plant, and that he had provided this information to Pasqualitto. Even though he "worked" for Plant Chairman Poet, Shook was not a Local Union officer but instead, like Crump, had been appointed by the International Union.

Crump also relied on an August 31, 2009 email which Pasqualitto sent to Shea and Blumberg. In the email, Pasqualitto said that he did not specifically remember speaking with Craig about her plant preference. However, he did speak with UAW representatives at the truck plant and added, "I would not have arbitrarily entered a selection of ISA for Craig without speaking to her."

Crump informed William Rooney, the labor relations manager for the Employer's assembly plants, that Craig had been surveyed and selected the ISA plant, and the Employer assigned Craig to work at the ISA plant.

Craig appealed Crump's decision through the Union's internal grievance procedure. It remains pending.

In any event, even if Crump believed that Craig had lied about not being surveyed, such a belief did not cause the ultimate decision to assign Craig to the ISA facility. Rather, that decision flowed from Crump's conclusion that Craig had, in fact, been surveyed, and had selected the ISA plant.

The record does not suggest that Crump acted in bad faith in reaching this conclusion. To the contrary, the evidence indicates, and I find, that Crump tried to conduct a thorough, unbiased investigation and to make an impartial decision. Further, the credible evidence does not establish that any extraneous factor, such as the possibility that Craig would run for Union office,

entered into the decision–making process. I conclude that it did not.

The General Counsel offered evidence that after being surveyed and making their selections, certain employees were allowed to change them. Specifically, the government relies on the testimony of Mark Argo and Gerald Parker.

Argo testified that when initially surveyed, he chose ISA. Three or four weeks later, he told Craig that he had changed his mind and wanted to go to the Wayne Assembly Plant. According to Argo, he notified Craig of the change "about the first week of November, somewhere in there, October" of 2008. That date casts some doubt on the accuracy of Argo's testimony because the survey did not begin until December.

Gerald Parker testified that sometime in November 2008, Craig and Shook surveyed him. At that time, he expressed a preference to be transferred to the Wayne Assembly Plant. A few weeks later, he told them that he had changed his mind and wanted to go to the ISA Plant. The Employer transferred him to that facility.

Parker could not pinpoint the date on which he told Craig and Shook that he had changed his mind, but said that "it was within the parameters of when you had up to a certain amount of time before you had to turn in the paperwork or whatever. It was before that time." Parker offered that it was probably the first week in December 2008.

Parker did not know when the survey closed, adding "I do believe I did it before it was closed. If not, Beth and Larry would not have let me sign and change."

The General Counsel's brief cites the testimony of Argo and Parker to support the argument that Shook should not be credited. More specifically, the government argues that their testimony contradicts Shook's denial that he ever allowed an employee to change his response to the survey question. On cross–examination, Shook testified, in part, as follows:

> Q. BY MS. ROUMAYAH: Do you recall rank and file employees approaching you and Beth Craig and telling you that they wanted to change their selection?
> A. There was a few.
> Q. And once they told you they wanted to change their selection, you went ahead and got the changes made; isn't that true?
> A. Absolutely not.
> Q. Absolutely not?
> A. I didn't change a single person's plant selection.
> Q. You never helped Mark Argo change his plant selection?
> A. No.
> Q. You never helped Gerald Parker change his plant selection?
> A. No.

Argo's testimony on this point does not squarely conflict with Shook's. According to Argo, when he decided to change his preference, he told Craig. Based on Argo's testimony, I conclude that Craig, rather than Shook, helped him change his plant selection preference.

Parker testified that he told *both* Craig and Shook that he wanted to change his plant preference. The record does not establish which of them actually helped accomplish this change. Therefore, I am reluctant to conclude that Parker's testimony provides a sufficient basis for discrediting Shook's.

In sum, I find that Argo and Parker asked to change their preferences before the survey period closed and that the Respondents allowed them to do so. However, the record does not establish that the Respondents allowed any employee to change his or her preference after the closing date.

Analysis

I. 8(b)(2) and 8(a)(3) Issues

The Complaint alleges that Respondent Unions violated Section 8(b)(2) of the Act by causing or attempting to cause Respondent Employer to discriminate against an employee in violation of Section 8(a)(3) of the Act. The government bases these allegations solely on the Union's informing the Employer that Craig had made her selection, had chosen the ISA plant, and should be assigned to the ISA plant.

To violate Section 8(b)(2), a union must cause or attempt to cause an employer to discriminate in one of two ways. Either the discrimination must violate Section 8(a)(3) or else it must be against an employee whose union membership has been denied or terminated on some ground other than failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 29 U.S.C. Section 158(b)(2). Craig's union membership was not denied or terminated so this second basis does not arise in this case. Instead, the General Counsel alleges that the Employer's assignment of Craig to the ISA plant violated Section 8(a)(3).

If this assignment did not violate Section 8(a)(3), then the Union could not have violated Section 8(b)(2) by causing or attempting to cause it. Therefore, I will begin the analysis by determining whether the assignment violated Section 8(a)(3). In addressing this issue, it is appropriate to be guided by the Board's decision in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The Board has used the *Wright Line* analytical framework in other cases involving alleged Section 8(b)(2) violations. See *Nationsway Transport Service*, 327 NLRB 1033 (1999), *Avon Roofing & Sheet Metal Co.*, 312 NLRB 499, 503 (1993), *Combustion Engineering*, 272 NLRB 957, 966 fn. 6 (1984).

Under *Wright Line*, the General Counsel must establish four elements by a preponderance of the evidence. First, the government must show the existence of activity protected by the Act. Second, the government must prove that Respondent was aware that the employees had engaged in such activity. Third, the General Counsel must show that the alleged discriminatee suffered an adverse employment action. Fourth, the government must establish a link, or nexus, between the employees' protected activity and the adverse employment action. More specifically, the General Counsel must show that the protected activities were a substantial or motivating factor in the decision to take the adverse employment action. See, e.g., *North Hills Office Services, Inc*, 346 NLRB No. 96 (April 28, 2006).

In effect, proving these four elements creates a presumption that the adverse employment action violated the Act. To rebut such a presumption, the respondent must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. *Wright Line*, 251 NLRB 1083, at 1089; *Hyatt Regency Memphis*, 296 NLRB 259, 260 (1989), enfd. in relevant part 939 F.2d 361 (6th Cir. 1991). See also *Manno Electric, Inc.*, 321 NLRB 278, 280 at fn. 12 (1996).

In the present case, the evidence clearly satisfies the first and second *Wright Line* criteria. Craig was active in Local Union politics and held the elected position of bargaining representative. Respondent Employer certainly was aware of Craig's role in the Union. It had allowed Local Union officials to remain at the truck plant for months after other bargaining unit employees had been transferred, and Craig was one of those officials.

The third *Wright Line* standard requires the government to prove that the employee suffered an adverse employment action. See, e.g., *Leiser Construction, LLC*, 349 NLRB 413 (2007). Respondent Employer certainly took a personnel action involving Craig by transferring her to the ISA plant. However, the evidence fails to establish that this action was adverse.

Employees at the ISA plant earned a higher wage rate than employees at the Wayne Assembly Plant, and many employees sought transfer to that facility. Only employees who had more seniority than a specified minimum were given the choice of transferring to the ISA plant.

It cannot simply be assumed that a job which pays more is therefore more desirable, or that transfer to such a job might never constitute an adverse employment action. In a number of situations, such a transfer might worsen an employee's terms and conditions of employment.

For example, an employee might be transferred to a job requiring a much greater amount of physical labor or exposing the employee to hazardous conditions. Or an employee might be transferred to a remote location which increased commuting time and travel expenses.

The present record, however, does not establish that working conditions at the ISA facility were any more arduous than those at the Michigan Assembly Plant. Similarly, credible evidence does not indicate that working at the ISA facility increased the risk of injury or occupational illness. (It is true that work at the ISA facility included painting of vehicles, but the record does not indicate that Craig was concerned about exposure to paint or had a sensitivity to paint.) Moreover, because the ISA Plant and the Wayne Assembly Plant were located at the same industrial site, the commuting distances essentially were identical.

In other respects, the record does not suggest that work at the ISA Plant carried any disadvantage. Therefore, and taking into account the higher wage rate at the ISA Plant, I cannot find that transfer to this facility constituted an *adverse* employment action. Accordingly, I conclude that the government has not proven the third *Wright Line* requirement.

To establish a Section 8(a)(3) violation, the General Counsel must satisfy all four of the *Wright Line* elements. Since the government has not proven the third requirement, the analysis may stop at this point. However, in case the Board may disagree with my conclusion that the

third *Wright Line* criterion has not been met, I will proceed to the fourth requirement.

To satisfy the fourth *Wright Line* standard, the government must show a link or nexus between the employee's protected activities and the adverse employment action. Here, the evidence fails to establish that any unlawful motivation entered into the Employer's decision to transfer Craig to the ISA facility. Management's only motivation was to comply with the terms of the agreement it had reached with the Union concerning the transfer of employees from the truck plant.

However, the General Counsel argues that Union officials acted from improper motives. The government contends that William Johnson sought to prevent Craig from transferring to the Wayne Assembly Plant, where he was plant chairman, because he feared that Craig would run for Union office. Craig's candidacy, the government asserts, would pose a threat to Johnson or to Johnson's son, who also held a Union office. Craig's candidacy also might challenge the "green slate," a faction which supported Johnson and other Union officers at the assembly plant.

Credible evidence does not support the conclusion that political reasons motivated Johnson's opposition to Craig's transfer to the assembly plant. The General Counsel did present some evidence that Johnson did not like Craig. He admitted calling her a "lying water buffalo." However, Johnson testified that the bad feelings arose after the transfer controversy. As already noted, Johnson's demeanor as a witness impressed me and I conclude that he was telling the truth.

Johnson specifically denied that he opposed Craig's transfer to the assembly plant because she might run for Union office against him or his son. Crediting that testimony, I find that he was not so motivated.

Moreover, Johnson did not make the Union's decision that Craig should be transferred to the ISA plant. Crump, from the International Union, made that decision after conducting a thorough investigation. No credibly evidence suggests that internal Union politics affected Crump's decision. Likewise, the record does not establish that Crump took into consideration Craig's protected activities. To the contrary, I conclude that Crump tried to conduct an impartial, unbiased investigation and based his decision on that investigation.

In sum, credited evidence does not establish the fourth *Wright Line* element. Accordingly, and because the government also has not proven the third *Wright Line* requirement, I conclude that Respondent Employer's transfer of Craig to the ISA Plant did not violate Section 8(a)(3).

The General Counsel alleges that the Respondent Unions violated Section 8(b)(2) by causing or attempting to cause the Employer to transfer Craig to the ISA Plant rather than to the Michigan Assembly Plant, but does not allege that the Union caused or tried to cause the Employer to take any other action in violation of Section 8(a)(3). Because the Employer's transfer of Craig did not violate Section 8(a)(3), the Union did not violate Section 8(b)(2) either by bringing it about or by trying to do so.

II. 8(b)(1)(A) Issue

The government also alleges that the Respondent Unions violated Section 8(b)(1)(A) of the Act. The General Counsel's brief argues that "the Unions breached their duty of fair representation to Craig because they, through Larry Shook, misrepresented to the Employer that they had surveyed Craig, and that she had selected ISA."

However, crediting Shook's testimony, I have concluded that he did, in fact, survey Craig and that she did express a preference for ISA, albeit with the qualification that she would choose ISA if there were no appointive Union position for her at the Wayne Assembly Plant. That statement implies that if an appointive position were, in fact, available, she would choose the Wayne Assembly Plant instead.

Sometime later, Craig's qualifying language apparently became "lost" and the final spreadsheet simply indicated that Craig had expressed a preference for ISA. However, the record does not establish whether Shook neglected to tell Pasqualitto about the qualifying language or Pasqualitto, in preparing the spreadsheet, failed to include it.

Crook did admit on cross–examination that in September 2009, he said in a written statement that he was not present when Craig made her selection. However, the record does not provide any specific information about the statement. It does not disclose whether the statement was under oath, to whom it was given, or for what purpose. Any statement given in September 2009 would precede the present case, which began when Craig filed the unfair labor practice charges on October 2, 2009.

In these circumstances, I can only conclude that Shook made some kind of prior inconsistent statement. However, its value for impeachment purposes cannot be assessed without additional information not present in the record. In these circumstances, I do not change my decision to credit Shook's testimony.

The General Counsel's brief argues that "Respondent Unions harbored animus against Craig because of her intraunion activities." To support that assertion, the government points to remarks of the Union's plant chairman for the Michigan Assembly Plant, William Johnson. Specifically, Johnson admitted calling Craig a "lying water buffalo."

The government also asserts that Johnson stated that Craig would not be placed at the Wayne Assembly Plant. Michael Stockdale, the Union's plant chairman at the ISA facility, testified as follows:

> Q. Did you hear him say that there's no way she would be placed at Wayne Assembly?
> A. I did hear that, yes.

However, Stockdale did not describe when and where Johnson made this comment. He also did not identify who else, if anyone, was present.

Stockdale further testified that Johnson said he thought Craig would be a political adversary in his plant. However, he did not offer any context which would pinpoint the remark as to time and place. He also did not state who else, if anyone, was present. Without such foundational information, it is difficult to evaluate the reliability of Stockdale's testimony.

Jody Caruana, an employee who transferred to the Wayne Assembly Plant in August 2009, testified that "when we first moved over there in August, myself, Larry Shook, and Audrey Green would be sitting in the conference room, and he would come in with anger about how upset he is and said that she would, if it's up to him, she would never come to Wayne Assembly."

Green did not testify. Shook acknowledged, in his testimony, that he had heard Johnson "badmouth" Craig, but he denied that Johnson said that he did not want Craig at the Wayne Assembly Plant:

> Q. And you've heard him say that he does not want her at Wayne Assembly?
> A. No, no.

Johnson himself denied ever stating that Craig would not be placed at the Wayne Assembly Plant. He testified that he said "I would never agree to allowing her to change her survey."

Johnson also testified that he did not consider Craig to be a political threat to either himself or his son. As noted above, Johnson's demeanor as a witness impressed me and I believe he testified honestly. Therefore, I resolve any conflicts in the testimony by crediting Johnson. To the extent that the testimony of Stockdale and Caruana conflicts, I do not credit it.

The record does not establish the exact date on which Johnson called Craig a "lying water buffalo." When asked why he said that, Johnson explained, "It's been my opinion throughout this whole thing that the truth has not been told, that she was properly surveyed, so I consider her a liar." Johnson was referring to Craig's claim that she had never been surveyed.

In January 2009, Johnson had received a copy of the survey from Labor Relations Supervisor Shea. It indicated that Craig had expressed a preference to be transferred to the ISA Plant. Therefore, he had some reason to be skeptical when, months later, Craig claimed that she had never been surveyed.

Moreover, Craig actually had reported to the Wayne Assembly Plant, where Johnson was the plant chairman. Johnson learned about Craig's presence at the plant during a telephone conversation with Supervisor Shea. According to Johnson, whom I credit, Shea said "that Beth [Craig] had reported to the Wayne Plant and asked me if I had an issue with her *changing her survey*." (Italics added)

Thus, Johnson had good reasons to believe that Craig had expressed her plant preference during the survey period, months earlier but now, well after the survey closed, was trying to change it. Johnson had documentation dating back to January showing that Craig had specified a preference for the ISA Plant, and he had heard Shea refer to Craig "changing her survey."

On the other hand, Johnson, who worked in the Wayne Assembly Plant rather than the truck plant, could not be expected to know that Craig had protested to a management labor relations representative soon after she saw "ISA" next to her name on the final spreadsheet. She had not delayed in contesting this notation, but Johnson had no way of knowing that fact. From Johnson's perspective, Craig appeared to be reneging on her commitment well after the time for doing so had passed.

However, that perception alone did not provoke Johnson's anger. From his perspective, it seemed that Craig not only was seeking a privilege to which she was not entitled – permission to change her plant selection after the survey had closed – she also was failing to tell the truth, by claiming she had never been surveyed at all.

Johnson's testimony, and my observations of his demeanor as a witness, lead me to conclude that he is a "by–the–book" man who does not favor deviation from the established procedure. Someone's seeking an exception to the rule would make him uncomfortable and lying to obtain such an exception would offend his sense of justice.

When Johnson called Craig a "lying water buffalo," he was expressing disgust for what he believed to be her improper conduct. It would be incorrect, I believe, to take the remark out of that context and consider it evidence of an intent to prevent Craig from transferring to the Wayne Assembly Plant under any circumstances.

Johnson specifically testified that there had been no bad blood between Craig and himself before the "survey issue" arose: "We'd never had an issue in the past. I've been friends with her family for years." This testimony accords with Shook's testimony that there was a good working relationship between Craig and Johnson in the beginning, but that things "went south."

Additionally, in about September 2008, Johnson offered to appoint Craig to a Union position at the Wayne Assembly Plant. Johnson made this offer after the Union had learned that the Employer would be transferring employees away from the truck plant, but before any of those transfers had taken place. It seems quite unlikely that Johnson would have made such an offer if he had not wanted Craig to come to the Wayne Assembly Plant, or if he considered Craig to be a potential political threat.

The General Counsel's brief argues that if Craig had accepted an appointed position, she would have been precluded from running for elective office. Presumably, though, Craig would be able to resign from an appointed position should she decide to run for Union office at the Wayne Assembly Plant. Therefore, I do not perceive in Johnson's offer any devious intent to prevent Craig from engaging in political activity. Rather, I view Johnson's offer as evidence that he and Craig had a cordial relationship before Craig claimed, in August 2009, that she had not yet been surveyed.

As already noted, Johnson's demeanor as a witness impressed me favorably, as did his candor in admitting he made the "lying water buffalo" remark. Crediting his testimony, I conclude that his hostility towards Craig arose solely because he believed Craig lied to obtain a privilege to which she was not entitled.

Johnson credibly testified that if Craig had designated the Wayne Assembly Plant on the survey, "she would have been there. The survey clearly indicated she was going to ISA. I could not and would not change that survey."

No credible evidence supports the conclusion that Johnson tried to keep Craig out of the Michigan Assembly Plant for reasons tied to internal Union politics. As discussed above, I have credited Johnson's testimony that he did not consider Craig to pose a political threat either to himself or to his son, who also held Union office.

To establish an improper motive, the government also relies on the testimony of Michael Stockdale. The General Counsel's brief states that "Stockdale also testified that Shea stated to him during the meeting that someone did not want Craig working at Wayne Assembly." The meeting in question was the one in early September 2009 after International Representative Crump became involved in deciding where Craig should be placed. Stockdale's testimony was as follows:

> Q. And Shea was arguing during this meeting, Johanna Shea, that someone else did not want Craig to be at Wayne Assembly; is that correct?
> A. Yeah.

Stockdale's testimony does not identify the "someone else." The General Counsel's brief argues that because Respondent Employer did not call Shea as a witness, "an inference should be drawn that Shea would have testified adverse to the Respondents about Bill Johnson's involvement in Craig's placement." The General Counsel's brief does not specify exactly what testimony should be inferred.

Under certain circumstances, it is appropriate to draw an adverse inference from a party's failure to call a witness. However, those circumstances are not present here. It cannot be assumed that Johnson is the "someone else" mentioned in Stockdale's testimony.

Moreover, the Employer might well have regarded Shea's testimony as cumulative and unnecessary. Of the 15 witnesses who gave testimony, four worked in the Employer's labor relations and human resources department. In sum, I do not consider it appropriate to draw an adverse inference from Shea's failure to testify, and decline to do so.

Based on Johnson's credited testimony, I reject the General Counsel's argument that Union officials took action against Craig for reasons related to internal Union politics.

The events leading up to Craig's placement at the ISA facility began when Shook reported to management that Craig had selected ISA as her survey choice. However, the record does not establish that Shook was working in concert with Johnson, or had any intention of helping Johnson politically, when he took that action.

Under the Board's precedents regarding the duty of fair representation, a union is accorded a wide range of reasonableness so long as it acts in good faith, with honesty of purpose, and free from reliance on impermissible considerations. *Union de Obreros de Cemento Mezelado (Betteroads Asphalt Corp.)*, 336 NLRB 972 (2001), citing Auto Workers Local 651

(General Motors Corp.), 331 NLRB 479, 480 (2000) and *P.P.G. Industries*, 229 NLRB 713, 715 (1977), enf. denied 579 F.2d 1057 (7th Cir. 1978).

Based upon the credited evidence, I find that the Respondent Unions were acting in good faith and honesty of purpose, and did not rely on impermissible considerations. Therefore, I conclude that neither Respondent International nor Respondent Local violated Section 8(b)(1)(A) of the Act.

III. 8(a)(2) Issue

The Complaint alleges that Respondent Employer violated Section 8(a)(2) of the Act. That provision makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. . ."

The Complaint does not allege, and the General Counsel does not argue, that Respondent Employer dominated Respondent Unions or interfered with their formation or administration. The government also does not allege that Respondent Employer unlawfully contributed financial support to the Unions.

The General Counsel's brief states that the Employer violated Section 8(a)(2) "when it unlawfully assigned Craig to work at ISA, assisting the Union in its attempt to maintain the political landscape at Wayne Assembly by keeping Craig out." However, the brief does not elaborate on this theory except to cite *NLRB v. Newport News Shipbuilding Co.*, 308 U.S. 241 (1939) for the proposition that to "establish a violation of Section 8(a)(2), it is not necessary to establish anti–union animus or a specific motive to interfere with employees' Section 7 rights."

The government argues, essentially, that the Employer violated the law when it agreed with the Union that Craig had selected ISA as her survey choice and when it refused Craig's request to be transferred to the Wayne Assembly Plant and instead assigned her to the ISA facility, thereby assisting the Union's unlawful effort to prevent Craig from working at the assembly plant. However, I have concluded that the Union did not engage in unlawful conduct. Accordingly, the Employer's actions amount only to lawful cooperation with the Union in administering the agreement the parties had reached.

In sum, I conclude that neither Respondent Employer nor Respondent Unions violated the Act.

Conclusions of Law

1. Ford Motor Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 900 are labor organizations within the meaning of Section 2(5) of the Act.

3. At all times material to the Complaint, Respondent International was the exclusive bargaining representative of the production and maintenance employees at Respondent Employer's Wayne Assembly Plant, Respondent Employer's Integral Stamping and Assembly Plant, and, until about September 1, 2009, Respondent Employer's Michigan Truck Plant, all of which are located in Wayne, Michigan. At all material times, Respondent Local 900 was and remains Respondent International's designated agent for providing representation services to these employees.

4. The Respondents did not violate the Act in any manner alleged in the Complaint.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended[1]

ORDER

The complaint is dismissed.

Dated Washington, D.C., July 15, 2010.

Keltner W. Locke
Administrative Law Judge

[1] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.